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CLERK'S DISTRICT COURT
DISTRICT OF NEVADA

BY _____ DEPUTY

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CV-S-03-1146-RLH-LRL

17 UNITED STATES DISTRICT COURT
18 DISTRICT OF NEVADA

19
20 UNITED STATES OF AMERICA,

21 Plaintiff,

22 v.

23 CAPITAL CABINET CORPORATION

24 Defendant.

Civil No.

NOTICE OF LODGING OF PROPOSED
CONSENT DECREE PENDING
SOLICITATION OF PUBLIC
COMMENTS BY
U.S. DEPARTMENT OF JUSTICE

25 The United States has filed a Complaint, pursuant to Section 113(b) of the Clean Air Act
26 ("CAA"), 42 U.S.C. § 7413(b), and Section 325(c) of the Emergency Planning and Community
27 Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045(c), for injunctive relief and the assessment of
28

1 civil penalties, for violations of the CAA, the federally-approved Nevada State Implementation Plan,
2 the National Emission Standards for Hazardous Air Pollutants for wood furniture manufacturing
3 operations, codified at 40 C.F.R. Part 63, Subpart JJ, and Section 313 of EPCRA.

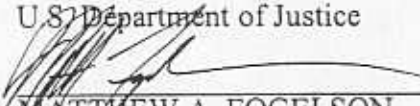
4 Plaintiff, the United States, hereby notifies the Court that, contemporaneous with the filing
5 of the Complaint, the United States lodged a copy of a Consent Decree for the above referenced
6 matter (attached as Exhibit 1 hereto).

7 The Court should not sign the Consent Decree at this time. Instead, the proposed Consent
8 Decree should remain lodged with the Court while the United States provides an opportunity for
9 public comment as provided by the Consent Decree and 28 C.F.R. § 50.7.

10 The Department of Justice will publish in the Federal Register a notice that the proposed
11 Consent Decree has been lodged with the Court. The Notice will solicit public comment
12 for a period of 30 days. During the comment period, no action is required of this Court.

13
14 Respectfully submitted,

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20 
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22 UNITED STATES DISTRICT COURT
23 DISTRICT OF NEVADA

24 UNITED STATES OF AMERICA,
25 Plaintiff,

26 v.

27 CAPITAL CABINET CORPORATION,
28 Defendant.

Civil No.

CONSENT DECREE

29 WHEREAS, Plaintiff United States of America, on behalf of the United States
30 Environmental Protection Agency ("EPA"), is concurrently filing a Complaint initiating this
31 action against Capital Cabinet Corporation (hereinafter "Capital" or "Defendant");

32 WHEREAS, EPA approved the Nevada State Implementation Plan ("SIP")
33 pursuant to section 110 of the Clean Air Act ("CAA");

1 WHEREAS, the United States alleges that Capital: (i) constructed and operated
2 its spray booths at its facility in North Las Vegas, Clark County, Nevada (the "Facility"), in
3 violation of the SIP, and that violations of the SIP are continuing; (ii) has been and is in violation
4 of the CAA's National Emission Standards for Hazardous Air Pollutants for Wood Furniture
5 Manufacturing Operations, 40 C.F.R. Part 63, Subpart JJ, 40 C.F.R. §§ 63.800 - 63.808; and
6 (iii) has violated section 313 of the Emergency Planning and Community Right-to-Know Act;

7 WHEREAS, the material allegations of the Complaint are deemed denied by
8 Capital, and this Consent Decree does not constitute an admission against interests by Capital;

9 WHEREAS, the parties have agreed that settlement of the civil judicial claims as
10 alleged in the Complaint is in the public interest and that entry of this Consent Decree without
11 further litigation is the most appropriate way to resolve this action;

12 THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED as follows:

13 **I. JURISDICTION AND PARTIES BOUND**

14 1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C.
15 §§ 1331, 1345, and 1355, 42 U.S.C. § 7413(b), and 42 U.S.C. § 11045(b)(3). This Court also has
16 personal jurisdiction over Defendant. Venue is proper in this Court pursuant to 28 U.S.C. §§
17 1391(b) and 1395(a), 42 U.S.C. § 7413(b), and 42 U.S.C. § 11045(b)(3). The Complaint states a
18 claim upon which relief may be granted against Capital pursuant to 42 U.S.C. § 7413(b) and 42
19 U.S.C. § 11045(b)(3). Notice of the commencement of this action has been given to the State of
20 Nevada through the Clark County Health District Air Pollution Control Division (the "District").
21 Defendant consents to and shall not challenge entry of this Consent Decree or this Court's
22 jurisdiction to enter, enforce, modify, or terminate this Consent Decree.

23 2. This Consent Decree shall apply to and be binding upon Defendant and its successors
24 and assigns, and on the United States on behalf of EPA.

25 3. If Defendant transfers any ownership interest or right to operate the Facility, including
26 but not limited to the sale, lease, or licensing of others to operate all or part of the Facility, Defendant

1 shall give notice of this Consent Decree to any successor-in-interest prior to such transfer.
2 Defendant shall send a copy of such written notification to EPA prior to such sale or transfer. Upon
3 sale or transfer of such Facility, Defendant shall attach a copy of this Consent Decree to the
4 agreement by which such Facility is sold or transferred and shall make performance of the
5 obligations of Defendant under this Consent Decree an obligation of any purchaser or transferee.
6 Transfer of ownership of the Facility will not relieve Defendant from the obligations of this Consent
7 Decree that are applicable to it.

8 II. DEFINITIONS

9 4. Unless otherwise expressly provided herein, terms used in this Consent
10 Decree that are defined in the CAA or in regulations promulgated under the CAA shall have the
11 meaning assigned to them in the CAA or in such regulations. Whenever terms listed below are
12 used in this Consent Decree, the following definitions shall apply:

13 (a). "Effective Date" shall mean the date of entry of the Consent Decree by the Clerk
14 of the United States District Court for the District of Nevada.

15 (b). "Facility" shall mean Capital's cabinet manufacturing facility located at 3645
16 Losee Road, North Las Vegas, Clark County, Nevada.

17 (c). "Facility-Wide VOC Emissions" shall mean all non-exempt VOC emissions, as
18 VOC is defined at 40 C.F.R. § 51.100(s)(1), emanating from the Facility as a result of wood
19 cabinet coating operations, including emissions from spray booths and from fugitive sources.
20 Emissions from cleanup solvents and thinners are included in this definition.

21 (d). "Production Coatings" shall mean all coatings, or other non-exempt VOC- or
22 HAP-containing materials used at the Facility in the course of wood cabinet production,
23 including, but not limited to, all adhesives, stains, sealers, top coats, paints, primers and any
24 non-exempt VOC-containing material added to the original coating supplied by the manufacturer.

25 (e). "Ultra-Low VOC Coatings" shall refer to Production Coatings that do not exceed
26 the following limits for VOC content in the coatings:

1 Acetone based sealers – 0.24 lbs VOC/lb solid;
2 Waterborne sealers -- 0.18 lbs VOC/lb solid;
3 Clear topcoats -- 0.20 lbs VOC/lb solid;
4 Pigmented topcoats – 0.16 lbs VOC/lb solid;
5 High solids stains and glazes – 0.18 lbs VOC/lb solid; and
6 Low solids coatings – 0.58 lbs VOC/gallon of material.

7
8 All VOC limits defined in this Paragraph 4.(e) are "as applied" and include any non-
9 exempt VOC-containing material, as VOC is defined at 40 C.F.R. § 51.100(s)(1), added to the
10 original coating supplied by the manufacturer. The following definitions apply to this
11 subparagraph:

- 12 (i) "Acetone based sealers" means any coating which contains more than 5
13 percent acetone by weight in its volatile fraction and contains binders, but
14 not opaque pigments, which seals the wood product prior to application of
15 the subsequent coatings.
16
17 (ii) "Waterborne Sealers" means any coating which contains more than 5
18 percent water by weight in its volatile fraction and contains binders, but
19 not opaque pigments, which seals the wood product prior to application of
20 the subsequent coatings.
21
22 (iii) "Clear Topcoat" is a final coating which contains binders, but not opaque
23 pigments, and is specifically formulated to form a transparent or
24 translucent solid protective film.
25
26 (iv) "Pigmented Topcoat" is a final opaque coating which contains binders

1 and colored pigments and is specifically formulated to hide the wood
2 surface and form a solid protective film.

3
4 (v) "High-Solids Stains and Glazes" are stains containing more than 1
5 pound of solids per gallon of material and include wiping stains, glazes,
6 and opaque stains.

7
8 (vi) "Low-Solids Coating" is a coating containing 1 pound, or less, of solids
9 per gallon of material and includes wiping stains, glazes, and opaque
10 stains.

11 III. CIVIL PENALTY

12 5. Within 30 days of entry of this Consent Decree, Capital shall pay to the
13 United States a civil penalty of ONE HUNDRED AND FORTY-TWO THOUSAND DOLLARS
14 (\$142,000), together with accrued interest. Interest on that amount shall begin to accrue on the
15 date of lodging of this Consent Decree at the rate determined pursuant to 28 U.S.C. § 1961, as of
16 the date of lodging, and shall continue to accrue until the date of final payment.

17 6. Payments under this Consent Decree shall be made by Electronic Fund
18 Transfer ("EFT") to the U.S. Treasury according to current United States EFT procedures. Upon
19 entry of this Consent Decree, the United States shall provide a copy of current EFT procedures to
20 Defendant pursuant to Section IX (Notification) of this Consent Decree. Concurrently with the
21 EFT, Defendant shall fax notice of payment to the person designated as "Point of Contact" on the
22 EFT transfer instructions and shall send notice of payment to EPA and the United States
23 Department of Justice ("DOJ") at the addresses listed in Section IX (Notification). The notice of
24 payment shall identify: (1) the date and amount of money transferred; (2) the name and address
25 of the transferring bank; (3) this case by name; (4) the civil action number; (5) DOJ #90-5-2-1-
26 07221; (6) this Consent Decree (including date of entry); and (7) a description of the reason for

1 the payment (including paragraph numbers of this Consent Decree that are most relevant to the
2 payment).

3 IV. INJUNCTIVE RELIEF

4 7. VOC Emission Caps

5 (a). Annual Facility-Wide VOC Emissions shall not exceed twenty-five (25) tons as
6 measured on a twelve-month rolling basis ("Annual VOC Emissions Cap"). The Annual VOC
7 Emissions Cap shall be in effect as of the Effective Date of this Consent Decree and shall remain
8 in effect for no more than five years from the Effective Date of this Consent Decree. The Annual
9 VOC Emissions Cap may be in effect for less than five years as provided for in Paragraph 7.(c),
10 below. Within sixty (60) days of the Effective Date of this Consent Decree, Capital shall submit
11 to the District, with a copy to EPA, a permit application, or an amendment to an existing permit
12 application, for a new authority to construct certificate ("ATC") and operating permit that contain
13 a provision establishing the Annual VOC Emissions Cap as required by this Paragraph 7.(a).

14 (b). Monthly Facility-Wide VOC Emissions shall not exceed 3.0 tons per calendar
15 month ("Monthly VOC Emissions Limit"). The Monthly VOC Emissions Limit shall be in effect
16 as of the Effective Date of this Consent Decree and shall remain in effect for no more than five
17 years from the Effective Date of this Consent Decree. The Monthly VOC Emissions Limit may
18 be in effect for less than five years as provided for in Paragraph 7.(c), below. Within sixty (60)
19 days of the Effective Date of this Consent Decree, Capital shall submit to the District, with a
20 copy to EPA, a permit application, or an amendment to an existing permit application, for a new
21 ATC and operating permit that contain a provision establishing the Monthly VOC Emissions
22 Limit as required by this Paragraph 7.(b).

23 (c). In the event that less than five years from the Effective Date of this Consent
24 Decree Capital converts all of its Production Coatings to Ultra-Low VOC Coatings as defined in
25 Paragraph 4.(e), above, and (i) the Facility's VOC emissions from the use of contact cement do
26 not exceed 350 lbs. as calculated on a 12-month rolling basis, or (ii) the Facility uses exclusively

1 contact cement containing no more than 0.16 lbs. of VOC/gallon of material once the Facility's
2 VOC emissions from the use of contact cement equal 350 lbs. during any 12-month rolling
3 period ("Contact Cement Limit and Usage Cap"), then Capital may submit an application to the
4 District, with a copy to EPA, requesting that the District (i) include in all Facility permits
5 applicable to its wood cabinet coating operations a requirement to use exclusively Ultra-Low
6 VOC Coatings in the Facility's production processes and to meet the Contact Cement Limit and
7 Usage Cap; and (ii) delete from all applicable Facility permits the Annual VOC Emissions Cap
8 and the Monthly VOC Emissions Limit. EPA will not object to such application on the basis that
9 the Annual VOC Emissions Cap and Monthly VOC Emissions Limit are no longer in effect,
10 provided that all the requirements of this subparagraph are met and Capital has met all of its
11 other obligations under this Consent Decree.

12 8. Ultra-Low VOC Sealers

13 As of the Effective Date of this Consent Decree, Capital shall use exclusively Ultra-Low
14 VOC sealers, as defined in Paragraph 4.(e), above, throughout the duration of this Consent
15 Decree. Within sixty (60) days of the Effective Date of this Consent Decree, Capital shall submit
16 to the District, with a copy to EPA, a permit application, or an amendment to an existing permit
17 application, for a new ATC and operating permit that contain a provision requiring the exclusive
18 use of Ultra-Low VOC sealers.

19 9. National Emissions Standard for Hazardous Air Pollutants

20 Within six months of the Effective Date of this Consent Decree, Capital shall comply
21 with either (i) all requirements of 40 C.F.R. Part 63, Subpart JJ ("Subpart JJ"); or (ii) an
22 alternative compliance protocol approved by EPA's Office of Air Quality Planning Standards
23 ("OAQPS") or other appropriate EPA office. Capital shall provide written notice to EPA at such
24 time as the Facility is in full compliance with Subpart JJ, certifying such compliance. Capital
25 may approach OAQPS or other appropriate EPA office for an alternative compliance protocol at
26 any time, but it must still be in compliance with either (i) all requirements of Subpart JJ; or (ii)

1 an alternative compliance protocol approved by OAQPS or other appropriate EPA office, within
2 six months of the Effective Date of this Consent Decree.

3 10. Recordkeeping and Reporting

4 (a). Beginning on the Effective Date of this Consent Decree and continuing until the
5 termination of the Consent Decree, Capital, for its wood cabinet coating operations, shall
6 maintain a weekly usage and emission log ("Operating Log") that: (1) records the manufacturer
7 product number, ID, or code for all Production Coatings, cleanup solvents, thinners, reducers,
8 additives, and contact cement (or adhesives) used at the Facility; (2) records the weekly usage of
9 all Production Coatings, cleanup solvents, thinners, reducers, additives, and contact cement (or
10 adhesives) used at the Facility; (3) records the VOC content as applied of all Production Coatings
11 cleanup solvents, thinners, reducers, additives, and contact cement (or adhesives) used at the
12 Facility; and (4) calculates Facility-Wide VOC Emissions for each work week by the end of the
13 following work week. The Operating Log shall calculate Facility-Wide VOC Emissions on a
14 calendar monthly and rolling 12-month basis by summing the weekly emissions to show
15 compliance with the Annual VOC Emissions Cap and the Monthly VOC Emissions Limit. The
16 calculation of total calendar monthly and rolling 12-month Facility-Wide VOC Emissions shall
17 be completed by the end of the first week of the following calendar month.

18 (b). Capital shall maintain a copy of each week's entries in the Operating Log for five
19 years. An incomplete Operating Log shall be deemed a failure to maintain records and shall
20 subject Capital to stipulated penalties pursuant to Paragraph 14. In the event that Capital, in any
21 given week, fails to record in the Operating Log the usage of all Production Coatings and/or
22 contact cement for that week, for purposes of determining Capital's compliance with the Annual
23 VOC Emissions Cap, the Monthly VOC Emissions Limit, and the Contact Cement Limit and
24 Usage Cap, the highest weekly emissions recorded during the 3-month period immediately
25 preceding the week for which the data was not recorded will be deemed the weekly usage of
26 Production Coatings and/or contact cement for that week. If a failure to record the usage of all

1 Production Coatings and/or contact cement for a given week occurs within the first 3 months of
2 the Effective Date of this Consent Decree, then the highest weekly emissions recorded after the
3 Effective Date of the Consent Decree will be deemed the weekly usage of Production Coatings
4 and/or contact cement for that week.

5 (c). Beginning on the Effective Date of this Consent Decree and until termination of
6 the Consent Decree, Capital shall submit to EPA pursuant to Section IX (Notification) of this
7 Consent Decree a quarterly emission report. The quarterly emission report shall state: (1) the
8 weekly and monthly VOC emissions for all spray booths; (2) the weekly and monthly VOC
9 emissions for any VOC-containing material used at the Facility outside of the spray booths; and
10 (3) total weekly and monthly VOC emissions at the Facility. All quarterly reports submitted at
11 least twelve months after the Effective Date of this Consent Decree shall also state the 12-month
12 rolling average of VOC emissions at the Facility. Quarterly emission reports submitted to EPA
13 shall be postmarked by the last day of the month following the last month covered by the report.

14 11. Modifications

15 (a). Capital shall make application to the District for permission to construct any
16 modification(s) for which such permission is required and shall follow the requirements of all
17 rules incorporated into the SIP that are applicable to such modification(s).

18 (b). The Annual VOC Emissions Cap and Monthly VOC Emissions Limit shall
19 remain in effect notwithstanding any modifications to the Facility made by Capital unless the
20 Annual VOC Emissions Cap and Monthly VOC Emissions Limit have been deleted by the
21 District from all applicable Facility permits pursuant to Paragraph 7.(c) or Paragraph 11.(c).

22 (c). Capital shall notify EPA if Capital decides to install emission control equipment
23 and as a result wishes to be relieved from the requirement to meet the Annual VOC Emissions
24 Cap and the Monthly VOC Emissions Limit and the provisions relating to use of the Ultra-Low
25 VOC Sealers, Ultra-Low VOC Coatings, or the Contact Cement Limit and Usage Cap. If Capital
26 so notifies EPA, Capital shall be relieved of the above-referenced requirements provided that the

1 following requirements are met:

2 (i) Capital applies all sealers which are not Ultra-Low VOC Sealers, all
3 Production Coatings which are not Ultra-Low VOC Coatings, and all contact cement
4 which exceeds the Contact Cement Limit and Usage Cap only in spray booths routed to
5 one or more control devices with the control device(s) operating with at least 90%
6 combined control efficiency. The term "combined control efficiency" refers to the
7 effectiveness of reducing VOC emissions from the Facility considering both the capture
8 efficiency of the emission collection system and the destruction or removal efficiency of
9 the add-on pollution control equipment;

10 (ii) Capital obtains a permit, or permits, for control equipment which meets the
11 requirements set forth at subparagraph 11.(c)(i);

12 (iii) Capital submits to EPA a source test protocol, results from a source test
13 conducted using the EPA-approved source test protocol, and a demonstration plan
14 showing how Capital will meet on a continuous basis the required combined control
15 efficiency level; and

16 (iv) EPA agrees in writing that Capital's permits, source test protocol, source test
17 and demonstration plan are adequate, and EPA agrees in writing that Capital is relieved of
18 the Annual VOC Emissions Cap and the Monthly VOC Emissions Limit pursuant to this
19 Paragraph 11.(c). If EPA does not so agree, then the Annual VOC Emissions Cap and the
20 Monthly VOC Emissions Limit will remain in effect, pursuant to the terms of this
21 Consent Decree. EPA will use its best efforts to provide written responses, as necessary,
22 within a reasonable period and shall not unreasonably withhold its authorization under
23 this Subsection.

24 If all the requirements of this Paragraph are met, Capital may submit an application to the
25 District, with a copy to EPA, requesting that the District delete from all applicable Facility
26 permits (i) the Annual VOC Emissions Cap and the Monthly VOC Emissions Limit, and (ii) any

1 requirement to use exclusively Ultra-Low VOC Coatings in the Facility's production processes
2 and to meet the Contact Cement Limit and Usage Cap. EPA will not object to such application
3 on the basis that the Annual VOC Emissions Cap and Monthly VOC Emissions Limit are no
4 longer in effect, provided that all the requirements of this Paragraph are met and Capital has met
5 all of its other obligations under this Consent Decree.

6 (d). Nothing in this Consent Decree limits or prevents or shall be deemed or construed
7 to limit or prevent installation of emission control equipment, so long as the Annual VOC
8 Emissions Cap and the Monthly VOC Emissions Limit are maintained.

9 V. STIPULATED PENALTIES

10 12. Late Notices or Late Reports

11 If Defendant fails to provide any notice, notification, or report required by this Consent
12 Decree by the due date, Defendant shall pay a stipulated penalty of \$500 per day for each day that
13 the notice, notification or report is late, not to exceed \$7,500 if such notice, notification or report
14 is made within 30 calendar days of its original due date. If Defendant files any notice or report
15 with incomplete, inaccurate, or missing information, Defendant shall provide EPA with a revised
16 report within seven (7) working days of Defendant's discovery of the problem, or if EPA
17 discovers the problem before the Defendant, within seven (7) working days of receipt of written
18 notification by EPA of the nature of the problem. Defendant shall pay a stipulated penalty of \$
19 500 per day for each day the revised report is submitted past the seven (7) working days after
20 discovery by Capital or notification by EPA. However, if a notice or report has emission
21 information based on inaccurate, incomplete or missing data supplied to Capital by an outside
22 source which is not under Capital's control, then Capital will not be subject to stipulated penalties
23 under this Paragraph so long as Capital provides correct information to EPA within seven (7)
24 working days of learning that the information supplied was incorrect.

25 13. Emission Limits

26 For each violation of the emission limits in Paragraphs 7.(a) and 7.(b), Defendant shall

1 pay a stipulated penalty as follows:

2 Annual VOC Emissions Cap:

\$12,500 for each 12-month period of violation as measured on a 12-month rolling basis. The first 12-month period is to commence the first full month after the Effective Date of this Consent Decree.

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4
5 Monthly VOC Emissions Limit:

\$15,000

6 14. Recordkeeping Requirements:

7 (a) Defendant shall pay a stipulated penalty of \$5,000 for each week that it fails to
8 prepare an entry in the Operating Log as required by Paragraph 10.(a).

9 (b) Defendant shall pay a stipulated penalty of \$1000 for failing to keep a given
10 week's entry in the Operating Log for five years as required by Paragraph 10.(b).

11 15. Other Compliance Plan Requirements: For each failure to comply with
12 any of the requirements of Paragraphs 7-11 (other than the notice and reporting requirements
13 subject to Paragraph 12, the emission limits subject to Paragraph 13, and the record keeping
14 requirements subject to Paragraph 14), Defendant shall pay a stipulated penalty for each violation
15 as follows:

<u>Penalty per day, per violation</u>	<u>Number of days</u>
\$ 1,000	first through fifteenth
\$ 3,000	sixteenth through thirtieth
\$ 5,000	each day beyond thirtieth

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20 16. Late Payment of Civil Penalty

21 Defendant shall pay stipulated penalties of \$2,500 per day for failure to timely pay the
22 civil penalty required by Paragraph 5.

23 17. Right of Entry

24 Defendant shall pay stipulated penalties of \$5,000 per day for failure of Defendant's
25 President or the Facility's Plant Manager or acting Plant Manager to comply with the right of
26

1 entry granted by Section VI of this Consent Decree. Defendant shall instruct employees in
2 positions to grant or deny entry that EPA and its contractors, consultants, and agents shall have
3 authority to enter the Facility at all reasonable times, upon proper presentation of credentials. If
4 someone other than Defendant's President or the Facility's Plant Manager or acting Plant
5 Manager fails to comply with the right of entry granted by Section VI of this Consent Decree,
6 Defendant shall pay stipulated penalties of \$5,000 per day for each day upon which such entry is
7 requested and denied.

8 18. All stipulated penalties, unless otherwise specified in this Consent Decree
9 or otherwise agreed to in writing by the parties, shall begin to accrue on the day after the
10 complete performance is due, or the day that a violation occurs and, if the violation or failure of
11 performance continues, such penalties shall continue to accrue through the final day of the
12 correction of the noncompliance or completion of the activity. Any stipulated penalty accruing
13 pursuant to this Consent Decree shall be payable upon demand and due not later than 30 days
14 from EPA's written demand. Stipulated penalties shall be paid in the manner set forth in
15 Paragraph 6. The transmittal letter accompanying a payment of stipulated penalties shall provide
16 the information required under Paragraph 6.

17 19. If Defendant fails to pay stipulated penalties owed pursuant to this Consent
18 Decree within 30 days of EPA's written demand, it shall pay interest on the late payment for each
19 day of late payment after the initial 30-day time period. The rate of interest shall be the interest
20 rate determined pursuant to 28 U.S.C. § 1961, as of the date payment was due. If Defendant
21 disputes its obligation to pay part or all of a stipulated penalty, it shall initiate the dispute
22 resolution procedures under Section VIII (Dispute Resolution). If Defendant invokes dispute
23 resolution, Defendant shall pay to the United States any amount that it does not dispute.

24 20. Payment of stipulated penalties for a violation of this Consent Decree shall
25 not preclude the United States from seeking additional monetary penalties or other relief in Court
26 for the violations that led to stipulated penalties. In addition, the United States reserves its right

1 to pursue any or all relief for any or all violations directly in Court and outside the provisions of
2 this Consent Decree.

3 VI. RIGHT OF ENTRY

4 21. EPA and its contractors, consultants, and agents shall have authority to
5 enter the Facility at all reasonable times, upon proper presentation of credentials. This provision
6 in no way limits or otherwise affects any right of entry held by EPA pursuant to applicable
7 federal, state, or local laws, regulations, or permits.

8 VII. FORCE MAJEURE

9 22. Defendant shall satisfy the requirements of Paragraphs 7-11 except to the
10 extent, and for the period of time, that such performance is prevented or delayed by events which
11 constitute a force majeure.

12 23. For the purposes of this Consent Decree, a force majeure is defined as any
13 event arising from causes beyond the control of Defendant and that cannot be overcome by
14 Defendant's diligent and timely efforts. Economic hardship, normal inclement weather, and
15 increased costs of performance shall not be considered events beyond the reasonable control of
16 Defendant for purposes of determining whether an event is a force majeure.

17 24. In the event of a force majeure, the time for performance of the activity
18 delayed by the force majeure shall be extended for the time period of the delay attributable to the
19 force majeure. The time for performance of any activity dependent on the delayed activity shall
20 be similarly extended, except to the extent that the dependent activity can be implemented in a
21 shorter time. EPA shall determine whether dependent activities will be delayed by the force
22 majeure and whether the time period should be extended for performance of such activities.
23 Defendant shall make diligent and timely efforts to avoid or minimize any delay caused by a
24 force majeure.

25 25. When an event occurs or has occurred that may delay or prevent the
26 performance of any obligation under this Consent Decree and that Defendant believes is a force

1 majeure, Defendant shall notify by telephone, (415) 972-3988, the Chief, Air Enforcement
2 Office, Air Division of EPA, Region 9, within 72 hours of Defendant's knowledge of such event.
3 Telephone notification shall be followed by written notification, made within seven (7) working
4 days of Defendant's knowledge of the event. The written notification shall fully describe: the
5 event that may delay or prevent performance; reasons for the delay; the reasons the delay is
6 beyond Defendant's control; the anticipated duration of the delay; actions taken or to be taken to
7 prevent or minimize the delay; a schedule for implementation of any measures to be taken to
8 mitigate the effect of the delay; and the time needed to implement any dependent activities.

9 26. Defendant's failure to comply with the force majeure notice requirements
10 provided in Paragraph 25 for any delay in performance will be deemed an automatic forfeiture of
11 its right to assert that the delay was caused by a force majeure unless such failure to provide
12 notice was caused by a force majeure.

13 27. Within seven (7) working days after receiving notice from Defendant of a
14 force majeure, EPA shall provide written notification to Defendant stating whether Defendant's
15 request for a delay is justified. EPA's failure to respond to a request for a delay shall be deemed a
16 denial of that request. If Defendant disagrees with EPA's determination, it may initiate dispute
17 resolution procedures pursuant to Section VIII (Dispute Resolution).

18 **VIII. DISPUTE RESOLUTION**

19 28. If Defendant disputes any determination made by EPA under this Consent
20 Decree related to (1) a request by EPA for stipulated penalties, (2) EPA's determination related
21 to force majeure, or (3) the termination of the Consent Decree under Paragraph 38, it shall send a
22 written notice to EPA and DOJ outlining the nature of the dispute and requesting informal
23 negotiations to resolve the dispute. Such period of informal negotiations shall not extend beyond
24 15 working days from the date when the notice was sent unless the parties agree otherwise.

25 29. If the informal negotiations are unsuccessful, the determination of EPA
26 shall control, unless Defendant files a motion with this Court for dispute resolution. Any such

1 motion must be filed within 30 days after termination of informal negotiations under Paragraph
2 28. Such motion must be concurrently sent to DOJ and EPA in accordance with Section IX
3 (Notification) of this Consent Decree. In any such dispute resolution proceeding, Defendant
4 bears the burden of proving, by a preponderance of the evidence, that (i) in disputes regarding
5 EPA's request for stipulated penalties under Section V, Defendant did not violate the terms and
6 conditions of this Consent Decree; (ii) in disputes regarding Section VII (Force Majeure), the
7 delay was caused by circumstances beyond the control of Defendant as provided in Paragraph
8 23, and the duration of the delay was appropriate under Paragraph 24; and (iii) in disputes
9 regarding termination of the Consent Decree under Paragraph 39, Defendant has satisfied all of
10 its obligations under this Consent Decree.

11 30. A timely motion by Defendant will not toll the accrual of stipulated
12 penalties under this Consent Decree for any ongoing noncompliance with respect to the disputed
13 matter, but disputed stipulated penalties determined to be owing need not be paid until 30 days
14 after resolution of the dispute.

15 IX. NOTIFICATION

16 31. Except as otherwise specifically stated, all notices and submissions from
17 Defendant to EPA required by this Consent Decree shall be sent by certified mail, express mail,
18 or similar overnight mail delivery service with return receipt requested and addressed to:

19 (a). Director, Air Division (AIR-1)
20 Attn: Cyntia Steiner, AIR-5
21 U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

22 (b). Regional Counsel
23 Attn: Kara Christenson (ORC-2)
24 U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

25 All notices and reports submitted to EPA or DOJ shall refer to this Consent Decree and the date
26 of entry of the Consent Decree, and shall cite the case name of United States v. Capital Cabinet
Corporation, the case number, and DOJ #90-5-2-1-07221.

1 32. All submissions to EPA shall be signed and affirmed by a responsible
2 official of the Defendant using the following certification statement:

3 I certify under penalty of law that I have examined and am familiar
4 with the information submitted in this document and all
5 attachments and that, based on my personal knowledge or my
6 inquiry of those individuals immediately responsible for obtaining
7 the information, I certify that the information is true, accurate, and
8 complete. I am aware that there are significant penalties for
9 submitting false information, including the possibility of fines and
10 imprisonment for knowing submissions of materially false
11 statements.

12 33. Notice as required by this Consent Decree shall be submitted to:

13 U.S. Department of Justice: Chief, Environmental Enforcement Section
14 U.S. Department of Justice
15 Attn: DOJ # 90-5-2-1-07221
16 P.O. Box 7611
17 Washington, D.C. 20044

18 Matthew Fogelson
19 Trial Attorney
20 Environmental Enforcement Section
21 U.S. Department of Justice
22 301 Howard Street, Suite 1050
23 San Francisco, CA 94105

24 Capital Cabinet Corporation: Capital Cabinet Corporation
25 Attn: Rick Anderson
26 3645 Losee Road
 North Las Vegas, Nevada 89030

 Malcolm C. Weiss
 Jeffer Mangels Butler & Marmaro LLP
 1900 Avenue of the Stars, 7th Floor
 Los Angeles, CA 90067

27 X. MISCELLANEOUS

28 34. Entry of this Consent Decree and compliance with the requirements herein
29 resolve all civil claims of the United States against Defendant for the violations alleged in the
30 Complaint filed in this action or in the Finding and Notice of Violation ("NOV") issued to
31 Capital by EPA on July 31, 2000. This Consent Decree resolves only those matters specifically
32 alleged in the Complaint filed in this action and in the NOV, through the date of lodging of the
33 Decree.

1 35. Except as specifically provided herein, the United States does not waive
2 any rights or remedies available to it for violation by Defendant of federal or state laws or
3 regulations. This Consent Decree shall in no way affect the United States' ability to bring future
4 actions for any matters not specifically alleged in the Complaint filed in this action or in the
5 NOV, through the date of lodging of the Consent Decree, and resolved by this Decree. Nothing
6 in this Consent Decree is intended to or shall be construed to operate in any way to resolve any
7 criminal liability of Defendant.

8 36. This Consent Decree in no way affects Defendant's responsibilities to
9 comply with all federal, state, or local laws and regulations.

10 37. Each party shall bear its own costs and attorney's fees in this action.

11 38. This Consent Decree constitutes the final, complete and exclusive
12 agreement and understanding among the Parties with respect to the settlement embodied in this
13 Consent Decree. The Parties acknowledge that there are no representations, agreements or
14 understandings relating to the settlement other than those expressly contained in this Consent
15 Decree. This Consent Decree may not be enlarged, modified, or altered unless such
16 modifications are made in writing and approved by all parties and the Court.

17 39. This Consent Decree shall terminate no more than five years from its
18 Effective Date, provided Defendant has satisfied all of its obligations under this Consent Decree
19 and has obtained EPA's consent to termination, which consent shall not be unreasonably
20 withheld, according to the following procedure: Defendant shall provide EPA notice within one
21 month after satisfying all of its obligations of this Consent Decree. The notice required by this
22 Paragraph shall specifically state that Defendant has satisfied all obligations of the Consent
23 Decree, shall identify those obligations and provide evidence that the obligations have been
24 satisfied, shall state that Defendant believes the Consent Decree can be terminated, and shall
25 refer to this Paragraph 39. After receiving notice from Defendant, EPA will provide Defendant
26 with a written response, either stating EPA's agreement that the Consent Decree is terminated, or

1 stating EPA's determination that the Consent Decree should not be terminated. If EPA fails to
2 provide written response within 60 days after receiving written notice from Defendant or if EPA
3 determines that the Consent Decree should not be terminated, Defendant may initiate dispute
4 resolution procedures pursuant to Section VIII (Dispute Resolution). If EPA determines that the
5 Consent Decree may be terminated, the United States and Defendant will enter into a joint
6 stipulation to be filed with the Court terminating the Consent Decree. Once terminated, this
7 Consent Decree and its terms shall have no force or effect and Defendant shall follow the
8 requirements of all rules incorporated into the Nevada SIP that are applicable to the Facility.

9 40. The Court shall retain jurisdiction to resolve any disputes that arise under
10 this Consent Decree in accordance with the procedures set forth herein, including any disputes
11 pending at the time the Consent Decree is terminated.

12 41. Defendant agrees and acknowledges that final approval of this Consent
13 Decree by the United States and entry of this Consent Decree is subject to the requirements of 28
14 C.F.R. § 50.7, which provides for notice of the lodging of this Decree in the Federal Register,
15 opportunity for public comment for at least 30 days, and consideration of any comments prior to
16 entry of the Consent Decree by the Court. The United States reserves its right to withdraw
17 consent to this Consent Decree based on comments received during the public notice period.
18 Defendant consents to entry of this Consent Decree without further notice.

19 XI. FINAL JUDGMENT

20 42. Upon entry by this Court, this Consent Decree shall constitute a final
21 judgment for purposes of Fed. R. Civ. P. 54 and 58.

22 ORDER

23 IT IS SO ORDERED:


24 _____
25 United States District Judge

26 DATED: _____

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For the Plaintiff United States of America:

Dated: Aug. 25, 2003

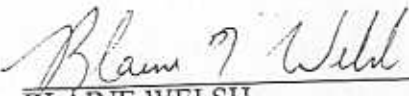

W. BENJAMIN FISHEROW
Deputy Chief
Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice

Dated: 9/12/03


MATTHEW FOGELSON
Trial Attorney
Environmental Enforcement Section
United States Department of Justice
301 Howard Street, Suite 1050
San Francisco, California 94105
Telephone: (415) 744-6470

DANIEL G. BOGDEN
United States Attorney

Dated: 9/15/03

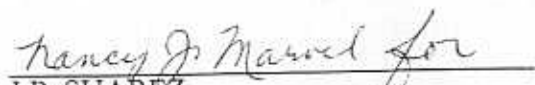

BLAINE WELSH
Assistant United States Attorney
District of Nevada


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Dated: Sept. 4, 2003

Dated: Sep 11, 2003

OF COUNSEL:


J.P. SUAREZ
Assistant Administrator for Enforcement
U.S. Environmental Protection Agency
Washington, D.C.


WAYNE NASTRI
Regional Administrator
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Agency, Region 9
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For Defendant Capital Cabinet Corporation:

Dated: 6/25/03



RICK ANDERSON
President
Capital Cabinet Corp.
3645 Losee Road
North Las Vegas, Nevada 89030